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6 IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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THOMAS E. PEREZ, Secretary of Labor,
United States Department of Labor,

No. C 14-05549 JSW

Plaintiff,

v.

BAR-K, INC., WALTER NG, BRUCE
HORWITZ, and BAR-K, INC. 401(k),

Defendants.

**AMENDED ORDER GRANTING
MOTION FOR DEFAULT
JUDGMENT AND ADOPTING
MAGISTRATE'S REPORT AND
RECOMMENDATION**

This matter comes before the Court upon consideration of Magistrate Judge Jacqueline Scott Corley's Report and Recommendation (the "Report"), in which she recommends that this Court grant the motion for default judgment filed by Plaintiff Thomas E. Perez ("Plaintiff") against Defendant Bar-K, Inc. (the "Company"). No objections were filed.

Having considered the Report, Plaintiff's papers, the relevant legal authority, and the record in this case, the Court finds the Report thorough and well-reasoned and adopts it in every respect. Accordingly, Plaintiff's motion for default judgment is GRANTED.

The Court further enters the following terms:

- (1) The Company is removed as a fiduciary to the Bar-K 401(k) Plan (the "Plan");
- (2) The Company is permanently enjoined from violating the provisions of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001-1191c;

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(3) As the Company is jointly and severally liable for causing the Plain losses of \$1,320,252.16, including pre-judgment lost-opportunity costs as calculated through June 30, 2014, judgment shall be entered against the Company in that amount;

(4) Receivership Management, Inc., 783 Old Hickory Boulevard, Suite 255, Brentwood, TN 27027 (Phone: (615) 370-0051) is appointed as the Independent Fiduciary to the Plan who:

- (a) will be responsible for collecting, marshaling, paying out, and administering all of the Plan's assets and taking further action with respect to the Plan as appropriate, including terminating the Plan when all of its assets are distributed to all eligible participants and beneficiaries;
- (b) pursuant to the procedures outlined in the Employee Benefits Security Administration's Field Assistance Bulletin 2014-01, must exercise reasonable care and diligence to identify and locate each Plan participant and beneficiary who is eligible to receive a distribution under the terms of the Plan;
- (c) shall have all the rights, duties, discretion, and responsibilities of a trustee, fiduciary, and Plan Administrator under ERISA, including filing an annual Internal Revenue Service Form 5500;
- (d) shall be authorized to delegate or assign fiduciary duties as appropriate and allowed under the law and may retain such assistance as it may require, including attorneys, accountants, actuaries, and other service providers;
- (e) shall be authorised to receive up to \$13,000 from the assets of the Plan to operate the Plan for two years from the date it is appointed by the Court, and an additional \$1,100 from the assets of the Plan to operate the Plan each year thereafter;

- (f) shall be authorized to have full access to all data, information, and calculations to the Plan's possession and under its control, including information and records maintained by the Plan's custodial trustee or service provider;
- (g) shall have the authority to give instructions respecting the disposition of assets to the Plan;
- (h) shall comply with all applicable rules and laws; and
- (i) shall cooperate with all reasonable requests for information the Secretary may have.

Plaintiff shall serve a copy of this Order within three business days and shall file a proof of service with the Court.

IT IS SO ORDERED.

Dated: July 20, 2015

Jeffrey S. White
JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE